**(1985) 03 KL CK 0025**

**High Court Of Kerala**

**Case No:** C.R.P. No. 796 of 1980

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| E. Kolappan Pillai and another | | APPELLANT |
| | Vs | |
| Muthamma Pillai Swarnamma Pillai | | RESPONDENT |

**Date of Decision:** March 15, 1985

**Acts Referred:**

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(1)

**Citation:** (1985) KLJ 307

**Hon'ble Judges:** M. Fathima Beevi, J

**Bench:** Single Bench

**Advocate:** P. Gopalakrishnan Nair, for the Appellant; V. Vyasan Poti and N. Sugathan, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

M. Fathima Beevi J.

1. The short question that falls for decision in this revision is whether a tenant under the mortgagee can resist the execution of the decree obtained by the mortgagor for possession on redemption on the ground that an order of eviction under the Buildings (Lease and Rent Control) Act has not been obtained against the tenant. The court below distinguishing the decision in Ramankutty v. M.P. Peretra (1978 KLT 880) relied on by the revision petitioner rejected the claim. Hence the revision. The position is settled by a series of decisions. This Court in Ramankutty v. M.P. Pereira (1979 KLT 880) only said that even if there is a decree, the tenant cannot be evicted from the building except in accordance with the provisions of the Buildings (Lease and Rent Control) Act 1965. The question whether a tenant under the mortgagee against whom decree for redemption had been obtained is entitled to put forward such a claim did not arise for decision in that case. The Supreme Court has in

Sachalmal Parasram Vs. Ratnabai and Others, , after referring to the earlier decisions in Asa Ram and Another Vs. Mst. Ram Kali and Another, and Mahabir Gope and Others Vs. Harbans Narain Singh and Others, , stated that the termination of the mortgagee''s interest terminated the relationship of landlord and tenant and it could not in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further. The relationship of lessor and lessee cannot subsist beyond the mortgagee''s interest unless the relationship is agreed to by the mortgagor or a fresh relationship is recreated. The lessee cannot claim any rights beyond the term of his original lessor''s interest. These propositions well-understood find support with the Supreme Court decision and Full Bench decisions of several other High Courts. (See- Jagan Nath Piare Lal Vs. Mittar Sain and Others, and Lalji Purshottam Vs. Thacker Madhavji Meghaji, )

2. This Court has in Kumaran Nair, v. Mariuppan (1967 K.L.T : 1077) pointed out that

S. 11 (1) contemplates only the eviction of a tenant by his landlord and has had no application where there is no relationship of landlord and tenant between the person evicting and the one sought to be evicted. Clause 2(a) of S. 11 enables the landlord who seeks to evict his tenant to apply to the Rent Control Court.

Again it has been pointed out in 1981 KLT Short Notes Case No. 8 that:

The tenant of a mortgagee of a building is not entitled to any protection under the Kerala Buildings (Lease and Rent Control) Act as against the claim of the landlord mortgagor for recovery of possession of the property on redemption of the mortgage.

In view of the settled position of law that the relationship of landlord and tenant does not subsist between the mortgagee and his tenant after termination of the mortgage, it is not open to the tenant to resist the execution of a decree for possession on the basis of the Buildings (Lease and Rent Control) Act. The court below has rightly overruled the objection. The revision petition is therefore dismissed with costs to the respondent.